IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.475 OF 2002

Central Bureau of Investigation,
Thru' Shri Sandeep Mehra, P.I.
(Banks Securities & Frauds Cell,
White House, Walkeshwar, Mumbai) ...Applicant

Versus

1.Navnitlal Lallubhai Shah,
212, Walkeshwar Road,
Mumbai 400 006.

2.The State of Maharashtra ...Respondents

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Mr.A.M.Chimalkar i/b Mr.R.B.Thakare for Applicant.
Mr.A.H.H.Ponda for Respondent No.1.
Mr.K.V.Saste, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

APRIL 21, 2005.

ORAL JUDGMENT :

1. This Revision takes exception to the decision of the Special Judge, Greater Bombay dated

August 9, 2002 in Miscellaneous Application No.560 of 2001 allowing the discharge application preferred by the Respondent/accused No.8 Navnitlal Lallubhai Shah.

2. Briefly stated, on a complaint of the Oriental Bank of Commerce, the Central Bureau of Investigation registered regular case being R.C.No.4 of 1997 on 19th May 1997 for offences punishable under Section 120-B read with Sections 420, 468, 471 and 477 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. Initially, only four persons were named as accused namely; Shri Arun Bhargava, the then Chief Manager of the Bank (who later expired), Shri Prakash Hosati, Manager, Shri B.Balkrishnan, another Manager of the Bank and Shri Bharat M.Shah, Director of M/s.Adrik Traders Pvt.Ltd. After investigation, five more persons were arraigned as accused, including the Respondent/accused No.8 Navnitlal Lallubhai Shah.

3. The prosecution case in brief is that accused persons entered into criminal conspiracy

during the period 1995-96, the object of which was to defraud the Oriental Bank of Commerce, to the tune of Rs.6 crores approximately. The funds of Sir Kikabhai Premchand Settlement Trust No.XI (hereinafter referred to as the 'Trust') was misappropriated and the channel of the Bank was utilised for this crime. Besides, funds of Oriental Bank of Commerce were siphoned off and misappropriated.

4. The prosecution case is that object of this conspiracy was to cause illegal pecuniary loss to the Bank and wrongful gain to M/s.Adrik Traders Pvt. Ltd., in which, Bharat M.Shah as well as the Respondent Navnitlal Shah were the Directors.

5. According to the prosecution, the modus adopted by the accused was that Account No.6466 of of the Trust was opened. The Respondent as well as said Bharat M.Shah incidentally happened to be the Trustees of the said Trust. The Respondent/accused No.8 was one of the authorised signatory to operate the account of the Trust. As per that authority, three Certificates of deposits (CoDs) for Rs.2.92

crores, Rs.55 lakhs and Rs.38 lakhs respectively were opened on 7th March 1995 with the Oriental Bank of Commerce. These CoDs were to mature on 31st July 1995. As per the condition in the CoDs, the Bank was not authorised to grant loans against the same, nor buy back their own CoDs before maturity. Inspite of this condition, the CoDs were encashed prematurely on 30th May 1995, in furtherance of the criminal conspiracy entered into between the accused. No mandate of the Trust is found on record for that purpose. On encashment of the said CoDs, proceeds thereof, being Rs.3.85 crores were credited to the account of M/s.Adrik Traders Pvt.Ltd. by cheque issued from the account of the Trust. As mentioned earlier, said Bharat M.Shah/accused No.3 as well as Respondent Navnitlal Shah/accused No.8 are also Directors of the said M/s.Adrik Traders Pvt.Ltd.

6. The prosecution case is that Trust is part of the Ruby group of Companies. Ruby Group consists of Galore Projects International Pvt.Ltd., Adrik Traders Pvt.Ltd., Mrs.Aruna Shah (accounts maintained at both, Dadar Branch and Stock Exchange

Branches). It is alleged that the purpose of the above said illegal credit to the account of M/s.Adrik Traders Pvt. Ltd. was to clear the liability of the said Company towards Maharashtra State Co-operative Cotton Growers Federation. It is also alleged by the prosecution that the accused No.8/Respondent herein, together with other Trustees Shri Manoharlal C.Shah/accused No.7 signed three "Yourselves" cheques all dated 21st March 1995 aggregating to Rs.1.05 cores favouring the Oriental Bank of Commerce. No instructions regarding the disposal of the proceedings were given. Interestingly, these cheques have been issued without there being any sufficient balance in the account of the Trust with the said Bank and proceeds of the cheques were utilised for issuance of three CDRs in the like amount all of dated 22nd May 1995 in the name of one K.P.Shah, a fictitious person. It is matter of record that the amount for which said three cheques were issued, to which, the Respondent/accused No.8 was also one of the signatory, became available in the accounts of the Trust only on 4th April 1995. Interestingly, the CDRs have been given with retrospective effect from

21st March 1995 when, to the knowledge of the Respondent as also accused No.7, there was no balance available in the account of the Trust with the Bank at the relevant time.

7. It is further alleged that, against these CDRs., two loans were sanctioned on 27th May 1995 for Rs.50 lakhs and on 1st June 1995 for Rs.40 lakhs. The loans were sanctioned in the name of K.P.Shah, who is a fictitious person and proceeds thereof were credited to the account of M/s.Adrik Traders Pvt.Ltd. for meeting Company's liability towards the Maharashtra State Co-operative Cotton Growers Federation. It is further alleged that Arun Bhargava, the Branch Manager of Dadar Branch was transferred to Stock Exchange Branch of the Bank in March 1996. On the transfer of said Arun Bhargava, the said Trust opened another account with the Stock Exchange Branch being S.B.No.9725 under the signatures of M.C.Shah, who is the father of accused No.3 Bharat M.Shah and the Respondent Navnitlal Shah/accused No.8. The said Manoharlal C.Shah, lateron, claimed that the Trust was in possession of a Certificate issued by the Stock

Exchange Branch, which was to mature for an amount of Rs.6.28 crores, whereas, there was absolutely no investment by the Trust to that extent.

8. In short, the involvement of Respondent/accused No.8 in the commission of alleged offence, is spelt out from the materials on record. However, Respondent/accused No.8 preferred application for discharge before the Trial Court, which has been allowed by the impugned decision.

9. The first reason that has weighed with the lower Court is that the original Minutes Book of the Meeting of Board of Directors of M/s.Adrik Traders Pvt.Ltd. was not maintained as required by the provisions of Section 193 of the Companies Act, for which reason, the relevant Minutes of the Board, relied upon by the prosecution, will have to be discarded as it has no evidentiary value in view of Section 194 of the Indian Companies Act.

10. The second reason which has weighed with

the Trial Judge is that Respondent/accused No.8 was appointed as Additional Director of M/s.Adrik Traders Pvt.Ltd. on 9th August 1993; in view of the provisions of Section 260 of the Indian Companies Act, his term as Additional Director, in law, would expire on 8th August 1994 and no evidence is forthcoming to indicate that he was continued as Additional Director even thereafter, more particularly, during the relevant time from February 1995 onwards. The Trial Judge relied on the decision of our High Court in the case of **Dushyant D.Anjaria vs. M/s.Wall Street Finance Ltd. & Anr. reported in 2001 (1) Mh.L.J. 701** to support the view expressed by it that the Respondent/accused No.8 cannot be held responsible for the act of commission or omission after 8th August 1994.

11. The third reason recorded by the lower Court is that the only evidence against the Respondent/accused No.8 is that he had signed the relevant cheques issued from the Trust Account and nothing more. That, by itself, was not sufficient to indicate the complicity of the

Respondent/accused No.8 in the commission of the offence. On this reasoning, the Trial Judge allowed the discharge Application preferred by the Respondent/accused No.8.

12. Counsel for the Applicant has invited my attention to the materials on record to contend that the same clearly, much less, prima facie, indicate the involvement of the Respondent/accused No.8, which would disclose grave suspicion against him, which has not been properly explained. If it is so, considering broad probabilities of the case and the total effect of the evidence on record, it was obligatory on the part of the Trial Judge to frame charge against the Respondent/accused No.8. It is argued that the Trial Judge has committed manifest error which has caused serious miscarriage of justice and that the approach of the Trial Judge, cannot be sustained in law.

13. On the other hand, Counsel for the Respondent/accused No.8 has adopted the reasons recorded by the Trial Judge to support the conclusion to discharge the Respondent. He submits

that the view expressed by the Trial Judge is a possible view and is neither a manifest error resulting in serious miscarriage of justice nor a glaring defect requiring intervention of this Court, in exercise of revisional jurisdiction. In his submission, from the strong circumstances on record, which have not been properly explained by the prosecution clearly indicate that the offending transactions were completed by the co-accused, who had vested interest and in fact, the Respondent had no knowledge about the said act of commission and omission. Learned Counsel has relied on the bank statement made available to the Trust by the bankers, which makes no reference to the transactions in question.

14. Taking clue from that position, contends learned Counsel, that the records have been manipulated by someone else and the Respondent cannot be made liable for the act of commission and omission of the co-accused, especially when the Respondent had no knowledge whatsoever thereof. On the above argument, learned Counsel submits that the Application deserves to be dismissed.

15. Having considered the rival submissions, before I proceed to examine the justness of the approach adopted by the lower Court and the materials on record, it is necessary to recapitulate the legal position about the scope of examination of the materials by the Trial Judge at the stage of framing of charge for considering discharge application. Instead of multiplying the authorities, I would advert to the recent decision of the Apex Court in **Om Wati vs. State reported in (2001) 4 SCC 333**. The Apex Court has observed that at the stage of passing order in terms of Section 227 of the Code, the Court has merely to peruse the evidence in order to find out whether or not there is a sufficient ground for proceeding against the accused. If upon consideration, the Court is satisfied that the prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of Section 228 of the Code. It is then observed that only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted, before it is

challenged in cross-examination or rebutted by defence evidence, cannot show that the accused committed crime, then and then alone, the Court can discharge the accused. It is also observed that the Court is not required to enter into meticulous consideration of evidence and materials placed before it at this stage. In another recent decision of this Court in **Dilawar Balu Kurane vs. State of Maharashtra reported in (2002) 2 SCC 135**, the above legal position has been reiterated. The Court has observed that the settled position of law is that the Judge, while considering the question of framing the charges under Section 227 has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; whether the material placed before the Court discloses grave suspicion against accused, which has not been properly explained, the Court will be fully justified in framing the charge and proceeding with the trial; by and large, if two views are possible and the Judge is satisfied that the evidence produced before him gave rise to some suspicion, but not a grave suspicion against

accused, he will be fully justified to discharge the accused, and in exercising this jurisdiction, the Judge cannot act merely as a post office or a mouth piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, should not make a roring enquiry into pros and cons of the matter, as if he was conducting the trial. Keeping the above exposition in mind,I shall proceed to examine the present matter.

16. In the first place, I shall deal with the reasons which weighed with the Court below. The first reason as is noted by the Trial Judge, is that the Minute Book of the Meeting of the Board of Directors was not properly maintained as required by Section 193 of the Companies Act, for which reason, it had no evidentiary value. This finding has been recorded so as to take the view that the Respondent/accused No.8 was not the Additional Director of M/s.Adrik Traders Pvt.Ltd. at the relevant time. The conclusion so reached, in my opinion, has been rightly criticised by the

prosecution that the question of admissibility of the Minute Book of M/s.Adrik Traders Pvt.Ltd. cannot be the matter for considering the prayer for discharge. There is substance in the argument of the prosecution that the Minute Book of M/s.Adrik Traders Pvt.Ltd. was uniformly maintained by pasting all the relevant Minutes, except, of the first meeting. Even Form 32 as is produced by the prosecution does not indicate change in the status of the Respondent/accused as Additional Director of M/s.Adrik Traders Pvt.Ltd. at the relevant time. Accordingly, the fact as to whether the Respondent was the Director of M/s.Adrik Traders Pvt.Ltd. at the relevant time, was a triable issue and a matter for trial.

17. In any case, what has been glossed over by the Trial Judge is that the Respondent/accused No.8 has not only acted as Additional Director of M/s.Adrik Traders Pvt.Ltd. which Company has ultimately received the benefit of the criminal conspiracy, but was also Trustee of the Trust from whose account, the amounts were transferred in favour of M/s.Adrik Traders Pvt.Ltd. The amounts

were so transferred against cheques issued from the accounts of the Trust, to which, the Respondent/accused No.8 was one of the signatory.

18. The second reason which has weighed with the Trial Judge is essentially on the basis of exposition in the case of **Dushyant Anjaria (supra)**. However, what has been glossed o**ver by** the Trial Judge is that the observation in **Dushyant Anjaria's case (supra)** was in the fact situation of that case. In that case, the Petitioner clearly asserted that he had resigned as Additional Director of the Company on 2nd December 1992, much before the expiry of one year term from the date of his appointment as Director on 13th April 1992. The assertion so made by the Petitioner in that case, was not controverted by the Respondent. That is the crucial basis on which the matter has been considered by the Court by applying the legal position arising out of Section 260 of the Companies Act. Indeed, Section 260 of the Companies Act provides that the Additional Director would hold office only up to the date of next General Meeting of the Company, which is expected

to be held in one year's period. However, in the present case, the prosecution is not only relying on Form 32 issued by the appropriate Authority to indicate that the Respondent has been shown as Additional Director of the Company as is the case of co-accused Bharat M.Shah and Kamani who were also appointed along with the Respondent on 9th August 1993. Besides, the prosecution is also relying on the Minutes of the Meeting of the Board of Directors of M/s.Adrik Traders Pvt.Ltd. amongst others dated 25th January 1995 and 12th May 1995 to indicate that the Respondent continued to function as Additional Director of M/s.Adik Traders Pvt.Ltd. which is the relevant time when the offending transactions have taken place. The Respondent has been shown as having attended the meeting held on those dates.

19. In any case, the Respondent admittedly continued to be the Trustee and authorised signatory of the Trust and in fact, has not only signed the relevant cheque, which was the cause of crediting the amount of Rs.3.85 crores to the account of M/s.Adik Traders Pvt.Ltd. Even if the

case of the Respondent that he was not the Additional Director of M/s.Adik Traders Pvt.Ltd., at the relevant time, was to be accepted as it is, even so, the Respondent has been named being party to the criminal conspiracy. The Respondent has signed the relevant cheques. The Respondent was also responsible for opening of the account of the Trust and has signed the account opening forms as is indicated from the record. Moreover, the Respondent/accused No.8 was also responsible for opening of new account of the Trust with the Stock Exchange Branch after March 1996.

20. Taking all these circumstances into account and considering the broad probabilities of the case, prima facie case against the Respondent has been made out and the materials on record disclose grave suspicion against the Respondent/accused No.8, which cannot be said to have been properly explained. If it is so, the question of acceding to the request of Respondent/ accused No.8, does not arise.

21. Viewed in this perspective, the reason

which has weighed with the lower Court relying on the decision in **Dushyant Anjaria's case (supra)** cannot stand the test of judicial scrutiny.

22. The third reason which has weighed with the lower Court is that the only evidence on record against the Respondent/accused No.8 is that he was signatory to the cheques in question and nothing more. That, by itself, was not sufficient. However, once again, this reason is unsustainable from the materials on record. On the other hand, it is seen that the Trust account was opened in 1994 and the Respondent was one of the Trustees, was made the authorised signatory of the Trust. The Respondent signed three cheques against which CoDs were issued by the Bank. Thereafter, the Respondent signed another three cheques on 21st March 1995 for total sum of Rs.1.05 crores, on which date, the balance in the Trust account with the bank was insufficient to honour those cheques. The said amount became available only on 4th April 1995. It is not the case of the Respondent that he had signed blank cheques which were misused by the co-Trustee. The three cheques issued on 31st March

1995 were utilised for issuance of CDRs dated 22nd May 1995 which were given retrospective effect from 21st March 1995 being the date on which cheques were issued by the Trust, although, on that date, there was insufficient balance in the account of the Trust to honour the subject cheques.

23. As mentioned earlier, on 21st March 1995, the balance in the proposed account, was insufficient. Inspite of that, the CDRs were given effect from 21st March 1995. Besides, the CoDs issued against cheques issued on 16th February 1995, 20th February 1995 and 2nd March 1995 which were to mature on 31st July 1995 were prematurely encashed on 30th May 1995 and the amount was credited to the account of the Trust. On the same date (i.e. 30th May 1995), amount of Rs.3.85 crores was credited to the account of M/s.Adrik Traders Pvt.Ltd. against the cheques issued from the account of the Trust. It has come on record that the Trust is part of Ruby Group of Companies. M/s.Adrik Traders Pvt.Ltd. is one of the sister concern of Ruby Group of Companies. The Respondent accused was also responsible for opening of Trust

Account in Stock Exchange Branch after March 1996 after Shri Arun Bhargava, the Chief Manager was transferred to that Branch. From the evidence on record, it is probable to assume the close relationship between the Trust and said Mr.Bhargava.

24. Suffice it to observe that on examining the six cheques in question, which are duly signed by the Respondent, the statement of Harish Mehta, General Manager of the Bank, Viraf R.Mehta, partner of the Chartered Accountant's firm, who had conducted special inspection of the Dadar Branch and Stock Exchange Branch, statement of Smt.Shweta Bhende, who has identified the signatures of the Respondent/accused No.8 on the relevant documents i.e. cheques, account opening form and deposed about the fact that there was insufficient balance in the Account of the Trust on 21st March 1995, Form 32 issued by the Registrar, indicating that Respondent/accused No.8 was shown as Additional Director of M/s.Adrik Traders Pvt.Ltd., Minutes Book of the Meeting of the Board of Directors of M/s.Adrik Traders Pvt.Ltd. dated 25th January 1995

and 12th May 1995, prima facie, shows the involvement of the Respondent being party to the criminal conspiracy, considering the broad probabilities and the total effect of the evidence, the material placed before the Court discloses grave suspicion against the Respondent No.8 which has not been explained properly.

25. In other words, neither the approach adopted by the Court below, nor the conclusion reached by it, can be sustained, either on facts or in law. As a result, this Application ought to succeed.

26. Accordingly, this Application is allowed. Impugned order dated 9th August 2002 allowing the discharge application preferred by the Respondent/accused No.8 is quashed and set-aside. Instead, the discharge application filed by the Respondent accused is dismissed with direction to the Trial Court to proceed against the Respondent/accused No.8 in accordance with law.

27. While parting, it needs to be clarified

that the Trial Court will proceed to decide the case against the Respondent/accused No.8, on its own merits in accordance with law on the basis of evidence adduced before it at the trial, uninfluenced by the observations made in this decision on merits, which are only for the limited purpose to consider prayer for discharge.

A.M.KHANWILKAR, J.